



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 2, 1992

Mr. Jeff Hankins  
Legal Assistant  
Program Division, Legal Services, 110-1C  
Texas Department of Insurance  
P. O. Box 149104  
Austin, Texas 78714-9104

OR92-528

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16930.

The Texas Department of Insurance (the "department") has received a request for information relating to an investigation of an insurance company. Specifically, the requestor seeks "the names of all claimants which have filed complaints against AIG/National Union Fire Insurance Company with regard to illegal retrospective rating plans or the use of illegal rates in the State of Texas . . . filed since 1984" and certain letters the department wrote on behalf of claimants. You claim that the requested information relates to anticipated litigation with the insurance company and that section 3(a)(3) of the Open Records Act excepts the information from required public disclosure. You also claim that sections 3(a)(7) and 3(a)(11) except portions of the requested information.

Section 3(a)(3), the "litigation exception," excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4. When parties to litigation have been provided with the information at issue, section 3(a)(3) does not protect it from further disclosure. Open Records Decision No. 493 (1988) at 2. Accordingly, the department may not withhold from required public disclosure the document dated October 8, 1991, titled "Notice of Intention to Institute Disciplinary Action," and the letter dated October 3, 1991, to Mr. Joe Boggins, which documents clearly have been made available to parties to the litigation that the department anticipates. See Open Records Decision No. 551 at 4.

We proceed to consider whether section 3(a)(3) authorizes the department to withhold the remaining requested information from required public disclosure. The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA), V.T.C.S. article 6252-13a. Open Records Decision Nos. 588 (1991); 368 (1983). Article 1.33(a) of the Insurance Code provides that the department is generally subject to APTRA. You advise us that the requested information relates to an investigation of an insurance company and that the department anticipates the investigation to culminate in a contested administrative case subject to APTRA with the named company as party. Accordingly, we conclude that litigation may be reasonably anticipated.

You indicate that the attorney representing the department has determined that the requested documents relate to the anticipated litigation. We agree. The department therefore may withhold from required public disclosure the remaining information under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of sections 3(a)(7) and 3(a)(11) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-528.

Yours very truly,

A handwritten signature in black ink, reading "Kimberly K. Oltrogge", followed by a horizontal line extending to the right.

Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

KKO/GCK/lmm

Ref.: ID# 16930  
ID# 17000

cc: Ms. Marjorie Porter  
Paralegal  
Taylor, Gaddy, Bakes & Hall  
2701 San Pedro Drive N.E.  
Albuquerque, New Mexico 87110